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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,338	04/01/2004	Chrystel Pourille-Grethen	05725.1318-00000	5358
22852	7590	11/02/2005	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/814,338	Applicant(s) POURILLE-GRETHEN ET AL.	
	Examiner Eisa B. Elhilo	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-92 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-92 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/17/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

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Claims 1-92 are pending in this application.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 10-24, 28-34, 36-58, 61-62, 64-76 and 78-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US 2001/0054206 A1) in view of Cottard et al. (US 2001/0023514 A1).

Matsunaga et al. (US' 206 A1) teaches a method for dyeing hair as claimed in claims 1, 47-48, 88-89 and 91 (see page 5, claim 4) wherein the method comprises applying to the hair a dyeing composition comprising a fluorescent of azomethine compound of a formula (2), which is similar to the claimed formula (F2) in claims 24 and 58, and wherein the fluorescent compound would obtained physical properties similar to those claimed in claims 16-23 and 49-57 (see page 1, paragraph, 0008), wherein the fluorescent compound is presented in the composition in the amounts of 0.01 to 20% , 0.05 to 10% or 0.1 to 5% as claimed in claims 28-30 and 70-72 (see pages 2-3, paragraph, 0016), wherein the composition further comprises additional direct dyes such as nitro dyes as claimed in claims 31-32 and 73-74 (see page 3, paragraph, 0023), oxidation bases such a para-phenylenediamine and couplers such as m-phenylenediamine in the percentage amounts of 0.01 to 20% and 0.5 to 10% which are overlapped with the claimed ranges as claimed in claims 36-41 and 78-83 (see page 3, paragraphs, 0020, 0021 and 0023),

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oxidizing agents such as hydrogen peroxide, perborates and laccase enzyme (four-electron oxidoreductase) as claimed in claims 42-46 and 84-87 (see page 3, paragraphs, 0018 and 0019), nonionic surfactants as claimed in claim 1, (see page 3, paragraph, 0025), wherein the composition is prepared into a two-part composition as claimed in claim 92 (see page 3, paragraph, 0026).

The instant claims differ from the reference by reciting a composition comprising specific species of amphoteric and nonionic surfactants.

However, Matsunaga et al. (US' 206 A1) suggests the use of nonionic and amphoteric surfactants in the hair dyeing composition (see page 3, paragraph, 0025).

Cottard et al. (US' 514 A1) in analogous art of keratin fibers dyeing formulation, teaches a composition comprising nonionic surfactants of oxyethylenated fatty alcohols and alkylpolyglycosides as claimed in claims 1, 10-12, 64-66 (see page 16, paragraph, 0324), amphoteric surfactants of imidazolium derivatives of (C₈-C₂₀)alkylbetaines and Amphocarboxyglycinates as claimed in claims 1, 7-8 and 61-62 (see page 16, paragraphs, 0325 and 0327), wherein the percentage amounts of the surfactants are 0.01 to 30% which overlapped with the claimed percentage ranges as claimed in claims 13-15 and 67-69 (see page 17, paragraph, 0339), direct dyes such as anthraquinone dyes in the amounts of 0.01 to 10% which within the claimed ranges or overlapped with the claimed ranges as claimed in claims 32-34 and 74-76 (see page 8, paragraph, 0165).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Matsunaga et al. (US' 206 A1) by incorporating the nonionic and amphoteric surfactants as

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taught by Cottard et al. (US' 514 A1) to make such a composition. Such a modification would be obvious because Matsunaga et al. (US' 206 A1) as a the primary reference suggests the use of the genus nonionic and amphoteric surfactants in the hair dyeing composition (see page 3, paragraph, 0025). Cottard et al. (US' 514 A1) as a secondary reference clearly teaches the claimed species of nonionic and amphoteric surfactants, and, thus, a person of the ordinary skill in the art would be motivated to incorporate the claimed species alkybetaines, amphocarboxglycinates and oxyalkylenated of nonionic and amphoteric surfactants as taught by Cottard et al. in the composition of Matsunaga et al. with a reasonable expectation of success for improving the performance of the dyeing composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to claims 2-6 and 90, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply such a dying composition to any human keratin materials as claimed because the disclosures of the combined references clearly teach the claimed dyeing ingredients (fluorescent and nonionic and/or amphoteric surfcatants), which should have similar properties and could applied to similar human keratin materials. Further, Cottard et al. (US' 514), clearly teaches that the composition is used for oxidation dyeing of keratin fibers, such as human keratin fibers like hair (see page 1, paragraph, 0001), which implies that the composition is not limited to the hair and can be applied to any keratin fibers beside the hair, and, thus, a person of the ordinary skill in the art would expect such a composition be used or applied to any keratin fibers with different tone heights include skin, and would expect such a composition to have properties and effects similar to those claimed, absent unexpected results.

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2 Claims 9 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US 2001/0054206 A1) in view of Cottard et al. (US 2001/0023514 A1) and further in view of Shibata et al. (US 6,156,077).

 The disclosures of Matsunaga (US' 206 A1) and Cottard et al. (US' 514 A1) as described above, do not teach or disclose the claimed species of nonionic surfactant alkylpyrrolidones as claimed. However, the reference of Matsunaga et al. (US' 206 A1), generally suggest the use of the genus nonionic surfactants in the keratin fiber (see page 3, paragraph, 0025).

 Shibata et al. (US' 077) in analogous art of keratin fibers dyeing formulation, teaches a method for dyeing keratin fibers comprising applying to the keratin fibers a dyeing composition comprising nonionic surfactant of the claimed species alkylpyrrolidone as claimed in claims 9 and 63 (see col. 9, lines 25-28).

 Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Matsunaga (US' 206 A1) by incorporating the nonionic surfactants alkylpyrrolidones as taught by Shibata et al. (US' 077) to make such a composition. Such a modification would be obvious because the primary reference suggest the use of the genus nonionic surfactants in the dyeing composition (see page 2, paragraph, 0015). Shibata et al. (US' 077) as a secondary reference clearly teaches and discloses alkylpyrrolidone compounds of the claimed species, and, thus, a person of the ordinary skill in the art would be motivated to incorporate the alkylpyrrolidone nonionic surfactants as taught by Shibata et al. (US' 077) in the dyeing composition of Matsunaga (US' 206 A1) with a reasonable expectation of success for improving the

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performance of the dyeing and would expect such a composition to have similar properties to those claimed, absent unexpected results.

3 Claims 25-27 and 59-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US 2001/0054206 A1) in view of Cottard et al. (US 2001/0023514 A1) and further in view of Rondeau (US 6,436,153 B2).

The disclosures of Matsunaga (US' 206 A1) and Cottard et al. (US' 514 A1) as described above, do not teach or disclose the fluorescent compound of the claimed formula (F4).

However, Matsunaga et al. (US' 206 A1), clearly teaches a dyeing composition comprising a number of fluorescent dyes (see page 2, paragraph, 0014).

Rondeau (US' 153 B2) in other analogous art of hair dyeing formulation, teaches a composition comprising a fluorescent dye having a formula (I), which is similar to the claimed formula (F4), when in the reference's formula, A represents formula A13 (see col. 3, formula A13), D is chosen from -CH group, R'3 and R3 are hydrogen atoms, R1 and R2 are methyl radicals or form a heterocyclic radical as claimed in claims 25-27 and 59-60 (see col. 1, lines 55-67 and col. 2, lines 1-6 and col. 7, formula 14).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Matsunaga (US' 206 A1) by incorporating the fluorescent dyes as taught by Rondeau (US' 153 B2) to make such a composition. Such a modification would be obvious because the primary reference suggest the use of fluorescent dyes in the dyeing composition (see page 2, paragraph, 0014). Rondeau (US' 153 B2) as a secondary reference clearly teaches and discloses the fluorescent compounds of the claimed species, and, thus, a person of the ordinary skill in the art

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would be motivated to incorporate the fluorescent compounds of the claimed species as taught by Rondeau (US' 153 B2) in the dyeing composition of Matsunaga (US' 206 A1) with a reasonable expectation of success for improving the dyeing properties of the composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

4 Claims 35 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US 2001/0054206 A1) in view of Cottard et al. (US 2001/0023514 A1) and further in view of Giuseppe et al. (US 5,744,127).

The disclosures of Matsunaga (US' 206 A1) and Cottard et al. (US' 514 A1), as described above, do not teach or disclose dyeing compositions in forms of dyeing shampoos as claimed.

However, Matsunaga et al. (US' 206 A1) clearly teaches that No particular limitation is imposed on the form of the hair dyeing composition (see page 3, paragraph, 0027).

Giuseppe et al. (US' 127) in other analogous art of hair treating formulation, teaches compositions formulated as a hair shampoo and hair dyeing as well (see col. 6, lines 5-6).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to formulate the dyeing composition of Matsunaga et al. in a shampoo form as taught by Giuseppe et al. to arrive at the claimed composition. Such a modification would be obvious because Giuseppe et al. clearly teaches that the dyeing composition can be formulated in a shampoo form, and, thus, one having ordinary skill in the art would be motivated to formulate the dyeing composition in any form includes the shampoo form, and would expect such a composition to have similar properties to those claimed, absent unexpected results.

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Applicants have not shown on record the criticality of the ingredients in the claimed invention.

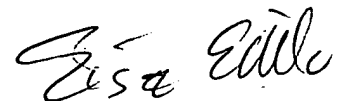
Conclusion

5 The references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
Primary Examiner
Art Unit 1751

October 27, 2005